

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
(Columbia Division)**

PLANNED PARENTHOOD SOUTH  
ATLANTIC, *et al.*,

Plaintiffs,

v.

ALAN WILSON, in his official capacity as  
Attorney General of South Carolina, *et al.*,

Defendants.

Case No. 3:21-cv-00508-MGL

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**PLAINTIFFS’ MOTION FOR A TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY INJUNCTION**

Plaintiffs hereby move pursuant to Federal Rule of Civil Procedure 65 for a temporary restraining order and preliminary injunction to enjoin Defendants from enforcing Senate Bill 1, the “South Carolina Fetal Heartbeat and Protection from Abortion Act” (hereinafter, “the Act” or “SB 1”). SB 1 bans nearly all abortions in South Carolina beginning at approximately six weeks of pregnancy and threatens abortion providers with felony criminal and other penalties for running afoul of it.

The South Carolina Senate and House of Representatives have passed SB 1, and it is now before Governor McMaster, who has pledged to sign it “immediately.”<sup>1</sup> The Act will take immediate effect upon his signature, which is expected imminently.

At that point, to avoid SB 1’s harsh effects, Plaintiffs, who are health care providers, will

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<sup>1</sup> Gov. Henry McMaster, State of the State Address, Jan. 13, 2021 (“Send me the heartbeat bill and I will immediately sign it into law.”); Gov. Henry McMaster (@henrymcmaster), Twitter (Jan. 26, 2021, 12:26 PM), <https://twitter.com/henrymcmaster/status/1354118432900460544> (“As the Heartbeat Bill goes to the Senate floor today, I urge my colleagues in the General Assembly to send this bill to my desk for my signature!”).

be forced to stop providing abortion services to the vast majority of their patients. They have more than 75 patients who are scheduled for abortion appointments in the next 72 hours, including some as soon as tomorrow, February 19, 2021. Among the patients with appointments in the next 72 hours are at least three patients whose pregnancies are likely within just days of the second trimester, at which point Plaintiffs could no longer, consistent with their state abortion clinic licenses, provide abortion services to these patients, even if SB 1 were later enjoined. Many additional South Carolinians await services next week and in the weeks that follow. Plaintiffs anticipate the vast majority of these patients will be barred from obtaining an abortion in South Carolina if SB 1 is in effect.

A temporary restraining order, followed by a preliminary injunction, is urgently needed. As is more fully explained in the accompanying memorandum of law, South Carolina may not “prohibit any woman from making the ultimate decision to terminate her pregnancy before viability.” *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 846 (1992). Yet six weeks of pregnancy is months before any fetus could be viable, as existing South Carolina Code makes clear. *See* S.C. Code Ann. § 44-41-10(l) (creating a legal presumption that “viability occurs no sooner than the twenty-fourth week of pregnancy”). Plaintiffs will, therefore, ultimately prevail on their claim that SB 1 violates the substantive due process rights of their patients under the Fourteenth Amendment to the U.S. Constitution. Preliminary relief is also warranted because SB 1 will cause immediate, irreparable harm and the balance of equities and public interest weigh in favor of enjoining this blatantly unconstitutional law.

Plaintiffs request that, given the nature of the relief sought, this Court waive any requirement for bond.

Plaintiffs further request that the Court issue a temporary restraining order forthwith to

restrain Defendants, their employees, agents, and successors from enforcing SB 1 and to allow Plaintiffs to continue offering constitutionally protected abortion services to patients this week and in the weeks that follow.

Plaintiffs include with this motion (1) a memorandum of law, (2) the Declaration of Katherine Farris, M.D., (3) the Declaration of Terry L. Buffkin, M.D., (4) a proposed order for a temporary restraining order, and (5) a proposed order for a preliminary injunction.

Respectfully submitted,

/s/ M. Malissa Burnette

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Dated: February 18, 2021

\* *Pro hac vice motions to be filed*

**CERTIFICATE OF EFFORTS TO NOTIFY DEFENDANTS OF PENDING MOTION**

I certify that today, February 18, 2021, co-counsel Julie A. Murray personally emailed a copy of the foregoing motion and supporting attachments to all defendants, with an electronic copy to me, at the following email addresses:

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With an electronic copy to me, Ms. Murray also emailed the foregoing to the following individuals or entities:

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/s/ M. Malissa Burnette  
M. Malissa Burnette